

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BMW OF NORTH AMERICA, LLC, a
Delaware Limited Liability Company,
and BAYERISCHE MOTOREN
WERKE AG, a German Corporation,

Plaintiff,

v.

TOMASZ MAKSYMIAK, an
Individual; and DOES 1-10, inclusive,

Defendants.

Case No.: 2:16-cv-02333-FMO-PLAx

**PERMANENT
INJUNCTION AND DISMISSAL
WITH PREJUDICE**

HON. FERNANDO M. OLGUIN

The Court, pursuant to the Stipulation for Entry of Permanent Injunction against Defendants and Dismissal (“Stipulation”) by and between BMW OF NORTH AMERICA, LLC, and BAYERISCHE MOTOREN WERKE AG (collectively “BMW”), and Defendant TOMASZ MAKSYMIAK (“Defendant”), filed concurrently herewith, hereby ORDERS, ADJUDICATES and DECREES that a permanent injunction shall be and is hereby entered against Defendant in the above-referenced matter as follows:

1. **PERMANENT INJUNCTION.** Defendant and any person or entity acting in concert with, or at the direction of any of the Defendant, including any and all agents, servants, employees, partners, assignees, distributors, suppliers, resellers and any others over which any of the Defendant may exercise control, are hereby

1 restrained and enjoined, pursuant to 15 United States Code (“U.S.C.”) § 1116, from
2 engaging in, directly or indirectly, or authorizing or assisting any third party to
3 engage in, any of the following activities in the United States and throughout the
4 world:

5 a. copying, manufacturing, purchasing, importing, exporting,
6 marketing, selling, offering for sale, distributing or dealing in any product or service
7 that uses, or otherwise making any use of, any of BMW’s trademarks, including but
8 not limited to, the BMW® word and design marks, the M® word and design marks,
9 the MINI® word and design marks, and/or any intellectual property that is
10 confusingly or substantially similar to, or that constitutes a colorable imitation of,
11 any of BMW’s trademarks (collectively “BMW’s Trademarks”), whether such use
12 is as, on, in or in connection with any trademark, service mark, trade name, logo,
13 design, Internet use, website, domain name, metatags, advertising, promotions,
14 solicitations, commercial exploitation, television, web-based or any other program,
15 or any product or service, or otherwise;

16 b. performing or allowing others employed by, under control of, or
17 representing Defendant, or under his control, to perform any act or thing which is
18 likely to injure BMW or any of BMW’s Trademarks, specifically including but not
19 limited to the BMW®, M®, and MINI® word and design marks.

20 c. engaging in any acts of federal and/or state trademark
21 infringement, false designation of origin, unfair competition, dilution, or other act
22 which would tend damage or injure BMW; and/or

23 d. using, owning, possessing, and/or controlling any Internet
24 domain name or website that includes any of BMW’s Trademarks including but not
25 limited to the BMW® word and design marks, the M® word and design marks, and
26 the MINI® word and design marks.

27 2. Defendant is immediately ordered to deliver to counsel for BMW for
28 destruction all unauthorized products, including counterfeit BMW®, M®, MINI®-

1 branded products, stickers, labels, signs, prints, packages, wrappers, receptacles
2 and/or advertisements relating thereto in his possession or under his control bearing
3 any of BMW's Trademarks or any simulation, reproduction, counterfeit, copy or
4 colorable imitations thereof, and all plates, molds, heat transfers, screens, matrices
5 and other means of making the same, to the extent that any of these items are in
6 Defendant's possession.

7 3. This Permanent Injunction shall be deemed to have been served upon
8 Defendant at the time of its execution by the Court.

9 4. The Court finds there is no just reason for delay in entering this
10 Permanent Injunction, and, pursuant to Rule 54(a) of the Federal Rules of Civil
11 Procedure, the Court directs immediate entry of this Permanent Injunction against
12 Defendant.

13 5. Defendant will be making an agreed-upon payment to BMW, as more
14 particularly described in a separate Confidential Settlement Agreement.

15 6. **NO APPEALS AND CONTINUING JURISDICTION.** No appeals
16 shall be taken from this Permanent Injunction, and the parties waive all rights to
17 appeal. This Court expressly retains jurisdiction over this matter to enforce any
18 violation of the terms of this Permanent Injunction by Defendant.

19 7. **NO FEES AND COSTS.** BMW and Defendant shall each bear their
20 own attorneys' fees and costs incurred in this matter.

21 8. **DISMISSAL WITH PREJUDICE.** Upon entry of this Permanent
22 Injunction against Defendant, this case shall be dismissed with prejudice.

23 IT IS SO ORDERED, ADJUDICATED and DECREED this 27th day of
24 June, 2016.

25 _____/s/_____
26 HONORABLE FERNANDO M. OLGUIN
27 United States District Court Judge
28 Central District of California